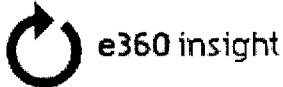


# EXHIBIT

A



Smarter, more relevant marketing helps my business grow faster and more profitably.

## Solutions

### TargetMX Permission Email Solution

Permission email marketing can be a real challenge in today's environment. To be successful, you must employ a best-in-class approach across several disciplines including confirmed opt-in registration, database management, campaign management, network management and delivery optimization. TargetMX succeeds where others fail by combining all of the necessary expertise in a total solution.

Build your opt-in database, acquire new customers or reinvigorate existing relationships. It's all possible and profitable with TargetMX. Contact us to learn more.

### Multichannel Lead Generation

What business today doesn't need new leads? To compete in today's environment, you need all cylinders firing. e360 Multichannel Lead Gen is a permission marketing approach to getting the most out of your web, email, direct mail and telemarketing channels. With over 350 demographics, lifestyle and behavioral variables available on every lead, e360 enables you to do more with those most interested in your products or services. Contact us to learn more.



### List Management & List Rental

Monetize your permission data assets in online and offline channels for maximum revenue impact. e360 list management combines confirmed opt-in permission processes with the best performing offers in the marketplace.

Our proprietary ad network of leading marketers helps your business realize incremental revenue across online and offline channels. With virtually zero management time and expense, list management revenue falls straight to the bottom line.

Looking for high-performance hotline lists? We manage over 165 targeted lists for direct mail and telemarketing campaigns. All lists are enhanced with leading demographic, lifestyle and behavioral selects for better targeting and increased response rates. Contact us to learn more.

### Data Enhancement

More data is the source of deeper customer insight. With e360 Data Enhancement Services, you can learn more about who your customers are, what products they buy and how to better meet their needs. Our expertise in multichannel data files allows you to improve the depth and breadth of your data assets while gaining deeper insight into what makes your customers tick. Contact us to learn more.

**EXHIBIT**  
**B**

Google

Spamhaus

[Advanced Search](#)  
[Preferences](#)
[Web](#) [Groups](#) [News](#)
Results 1 - 10 of about **2,830,000** for **Spamhaus**. (0.12 seconds)

## The Spamhaus Project

**Spamhaus** tracks the Internet's worst Spammers, known Spam Gangs and Spam Support Services, and works with ISPs and Law Enforcement Agencies to identify and ...

[www.spamhaus.org/](http://www.spamhaus.org/) - 16k - [Cached](#) - [Similar pages](#)

[Remove IP Address](#) - [www.spamhaus.org/lookup.lasso](http://www.spamhaus.org/lookup.lasso)

[SBL Information](#) - [www.spamhaus.org/sbl/](http://www.spamhaus.org/sbl/)

[The Spamhaus TOP 10](#) - [www.spamhaus.org/statistics.lasso](http://www.spamhaus.org/statistics.lasso)

[About Spamhaus](#) - [www.spamhaus.org/organization/index.lasso](http://www.spamhaus.org/organization/index.lasso)

More results from [www.spamhaus.org](http://www.spamhaus.org) »

Sponsored Links

### [Barracuda Web Filtering](#)

The Trusted Source For Web Content Blocking - Reclaim Your Network!  
[www.BarracudaNetworks.com](http://www.BarracudaNetworks.com)

### [Problems With Spamhaus?](#)

Read how e360 helps verify permission & remove SBL listings.  
[www.e360insight.com](http://www.e360insight.com)

### [Stop Spam & Viruses](#)

Spam and Virus Protection for your Company. 30 Day Trial. Learn more  
[www.spamsoap.com](http://www.spamsoap.com)

### [MailFoundry Spam Firewall](#)

Users still complaining about spam? Upgrade your anti-spam! Free evals  
[MailFoundry.com](http://MailFoundry.com)

### [Spamhaus Blacklist](#)

Free tool. Find out why your email is blocked. No registration.  
[www.MXToolbox.com](http://www.MXToolbox.com)

## The Spamhaus Project - SBL

The SBL ('**Spamhaus** Block List') is a list of IP addresses of known spam gangs and spam services. The SBL is broadcast in realtime to a network of mirrors ...

[www.spamhaus.org/sbl/](http://www.spamhaus.org/sbl/) - 17k - [Cached](#) - [Similar pages](#)

## The Spamhaus Project - Wikipedia, the free encyclopedia

The **Spamhaus** Project is a volunteer effort founded by Steve Linford in 1998 that aims to track e-mail spammers and spam-related activity. ...

[en.wikipedia.org/wiki/The\\_Spamhaus\\_Project](http://en.wikipedia.org/wiki/The_Spamhaus_Project) - 42k - [Cached](#) - [Similar pages](#)

## Techdirt: Will Spamhaus Get Shut Down Over Dispute?

Last month, we wrote about a judge awarding an \$11 million judgment against anti-spam organization **Spamhaus**, after an accused spammer (in **Spamhaus's** ...

[www.techdirt.com/articles/20061008/163213.shtml](http://www.techdirt.com/articles/20061008/163213.shtml) - 109k - Jun 24, 2007 -

[Cached](#) - [Similar pages](#)

## spamhaus: Blogs, Photos, Videos and more on Technorati

Everything in the known universe about **spamhaus**. Quick View; Posts · Blogs · Videos · Photos · Music · Events. Related tags: ...

[technorati.com/tag/spamhaus](http://technorati.com/tag/spamhaus) - 20k - Jun 24, 2007 - [Cached](#) - [Similar pages](#)

## ICANN | Spamhaus Litigation Update

The **Spamhaus** Project, Case No. 06 CV 3958. This lawsuit is currently pending in the United States District Court, Northern District of Illinois. ...

[www.icann.org/announcements/announcement-10oct06.htm](http://www.icann.org/announcements/announcement-10oct06.htm) - 15k - [Cached](#) - [Similar pages](#)

## Spam Laws: e360Insight v. Spamhaus

**Spamhaus** Project, No. 06 CH 12259 (Ill. Cook County Cir. Ct. July 20, 2006) (temporary restraining order), removed to federal court (July 21, 2006), No. ...

[www.spamlaws.com/cases/e360-spamhaus.shtml](http://www.spamlaws.com/cases/e360-spamhaus.shtml) - 3k - [Cached](#) - [Similar pages](#)

## ITworld.com - Spamhaus case could test ICANN

Internet experts are worried that a US court decision against antispam black-lister **Spamhaus** Project Ltd. could trigger a.

[www.itworld.com/Man/2681/061012spamhaus/index.html](http://www.itworld.com/Man/2681/061012spamhaus/index.html) - 39k - Jun 24, 2007 -

[Cached](#) - [Similar pages](#)

## Spamhaus nemesis e360 Insight sued over junk mail | The Register

e360 Insight, the Illinois-based mass mailer suing **Spamhaus** for calling it a spammer, is being sued in California for spamming. ...

[www.theregister.co.uk/2007/03/23/e360insight\\_lawsuit/](http://www.theregister.co.uk/2007/03/23/e360insight_lawsuit/) - 31k - [Cached](#) - [Similar pages](#)

## Look up an address in the SBL

<http://www.google.com/search?hl=en&q=Spamhaus>

6/25/2007

EXHIBIT  
C



*Bartly J. Loethen*  
*Direct: 312.454.0312*  
*bart@synergylawgroup.com*

June 15, 2007

**VIA FACSIMILE 312-840-7390**

Carrie Fino  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Re: e360 v. Spamhaus

Ms. Fino:

Please be advised that effective immediately Virtumundo is a customer of and doing business with e360. As e360 does with many of its partner lists, e360 has contracted with Virtumundo for network management and eMessaging services. I have attached a copy of the agreement between the two parties.

In accordance with the language in the order for injunctive relief, please remove SBL41635 (<http://www.spamhaus.org/sbl/sbl.lasso?query=SBL41635>) which is currently blocking all email sent from the 206.82.176.0/20 network. Please respond within 2 business days to this request. If you have any questions regarding this matter, please contact me, we assume you will continue to abide by the language of the injunction so that we are not required to return to court on this matter.

We have reviewed the list from this partner (as we do with other partners) and find it to meet the standards required by US law, however, if you have any concerns regarding any complaints received from messages sent by this customer, feel free to contact me. Our client is willing to discuss your concerns to determine if we can develop a reasonable solution to any perceived issues.

I hope you find this in keeping with the past practice for this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bartly J. Loethen", written over a white background.

Bartly J. Loethen

cc: David Linhardt

# JENNER & BLOCK

Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611-7603  
Tel 312 222-9350  
www.jenner.com

Chicago  
Dallas  
New York  
Washington, DC

June 18, 2007

**BY E-MAIL AND U.S. MAIL**

Bartly J. Loethen, Esq.  
Synergy Law Group, L.L.C.  
730 West Randolph Street, 6th Floor  
Chicago, IL 60661

Carrie A. Fino  
Tel 312 840-7290  
Fax 312 840-7390  
cfino@jenner.com

**Re: *e360 Insight v. The Spamhaus Project***

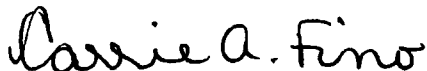
Dear Bart:

I write in response to your letter dated June 15, 2007, requesting that The Spamhaus Project remove Virtumundo from its SBL list (specifically, SBL 41635). We note that the agreement attached to your letter was executed a week before you provided us any notice of this change in circumstances, on June 8, 2007. We also note that your letter is based on a change in business relationships and not on any alleged violation of the order based on any relationship that existed as of the time of entry of the order, or any time prior to sending your letter. Under those circumstances, we do not think it is reasonable to demand that we respond within two business days, and we are not in a position to do so.

You offered to provide additional information to address any concerns The Spamhaus Project may have regarding this issue. You assert that Virtumundo complies with United States law. Please provide us with any information regarding the procedure used to review Virtumundo's list and determine that it conforms with US law so that we may further evaluate your position that Virtumundo comes within the terms of the Order. Once we receive that information, we will endeavor to advise you of our position within three business days.

Please feel free to contact me if you have any further questions. Best personal regards.

Sincerely,



Carrie A. Fino

cc: Craig C. Martin  
David Jimenez-Ekman

*Bartly J. Loethen*  
*Direct: 312.454.0312*  
*bart@synergylawgroup.com*



June 19, 2007

**VIA FACSIMILE 312-840-7390**

Carrie Fino  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611

Re: **e360 v. Spamhaus**

Dear Ms. Fino:

Although no portion of the relief order requires our client to provide the information requested, in the interest of making the injunctive relief work between our clients, we have taken two significant steps:

1. We made our request for "unblocking" in advance of sending.
2. We are providing information with respect to our process for verifying the data is legitimate and in compliance with our standards and US law.

Given the status of our case and in light of the scrutiny with which it is anticipated that your client will analyze our customers and affiliates and email sent by those customers and affiliates, e360 has undertaken even more strenuous review of the email databases it sends and now requires its partners, customers, and affiliates to gain what e360 has dubbed PVS Certification. In order to be PVS™ Certified, the marketer must submit a copy of their entire active email database, including all permission source data including the website where registration occurred, the date and ip address. If the customer does not meet the criteria established by e360 (which is a higher standard than the requirements set forth in the injunction), then e360 will not move forward with that customer. PVS™ is a series of data hygiene and permission scoring steps designed to verify permission quality and to identify problematic email records. Some of the categories of review are summarized below:

1. **Email Address Uniqueness** – Most email databases contain multiple duplicate records as registrations come in from a network of partner websites. The high-level of duplication makes it difficult for recipients to entirely remove their email address from all of the marketer's lists. The Email Address Uniqueness Score determines how many duplicate records exist and makes recommendations for responsible ways to treat duplicate records.
2. **Known Bounce File Suppression** – Many ISPs use the number and frequency of old or abandoned user accounts as criterion for allowing email messages to be delivered. The Known Bounce File Suppression process identifies known bounces.

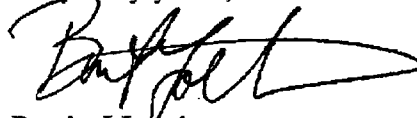
3. **Partner Domain Analysis** – In some cases, as many as 80% of complaints and trap hits are can be attributable to a handful of marketing partners. Partner Domain Analysis compares the marketer's opt-in domains against e360's file of partners that have an abnormally high-level of complaints and reported trap history.
4. **Screamer & Trap Account Analysis** – Some message recipients have a history for generating complaints and reporting to third-party reputation monitors. Screamer & Trap Account Analysis identifies these problematic records with the marketing partner.
5. **Domain Responsiveness** – Currently, there is no definitive source of valid recipient domains. Domain Responsiveness identifies good domains and bad domains based on e360's five-year email responder data.
6. **US Domain Analysis** – Commercial email laws vary from US law in Europe and in other parts of the world. US Domain Analysis is a data hygiene procedure used to identify US domains helping to separate US mailings from International campaigns.
7. **CASS-certification Postal Address Hygiene** – Requiring postal address is a simple way to increase the data quality and accuracy of your email database. CASS-certification compares postal address fields with the standardized U.S. Postal Service database. CASS-certified records are identified and formatted according to USPS specifications.
8. **Email Address Co-reg File Match** – The uniqueness of a marketer's email database versus other third parties can be an indication of overall data quality. Email Address Co-reg File Match compares the marketers file against e360's Proprietary File for unique addresses.

We provide this information in good faith and trust it will be kept confidential. It is hereby provided to you under the same auspices as the data responsive to the citation to discover assets was provided to me, that is - with the understanding that this information will be subject to a protective order and will not be provided to anyone other than those in your office and discussed with your client as is necessary for the purposes hereof.

We trust this is sufficient to satisfy your inquiries and would appreciate having the block removed from the requested ip address within 3 business days.

Thank you in advance for your attention and cooperation in this matter.

Very truly yours,



Bartly J. Loethen

cc: David Linhardt

# JENNER & BLOCK

Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611-7603  
Tel 312 222-9350  
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Chicago  
Dallas  
New York  
Washington, DC

June 22, 2007

**BY E-MAIL AND U.S. MAIL**

Bartly J. Loethen, Esq.  
Synergy Law Group, L.L.C.  
730 West Randolph Street, 6th Floor  
Chicago, IL 60661

Carrie A. Fino  
Tel 312 840-7290  
Fax 312 840-7390  
cfino@jenner.com

**Re: e360 Insight v. The Spamhaus Project**

Dear Bart:

I write in response to your letters dated June 15, 2007 and June 19, 2007, requesting that The Spamhaus Project remove Virtumundo from its SBL list (specifically, SBL 41635).

As you are well aware, the Permanent Injunction issued in this case applies only to "Plaintiffs or their affiliates, subsidiaries, or related companies *owned or controlled* by Plaintiffs." (emphasis added). Virtumundo does not come within the scope of this provision under the Injunction. As the Service Agreement you provided states: "Service Provider [e360] is an independent contractor and nothing in this Agreement shall be deemed to make Service Provider an agent, employee, partner or joint venturer of Customer. Neither party shall have any authority to bind, commit, or otherwise obligate the other party in any manner whatsoever." (Service Agreement ¶ 17(k)).

Based on the plain language of the Service Agreement between e360 and Virtumundo, Virtumundo is not an affiliate, subsidiary, or related company owned or controlled by e360. Furthermore, the IP addresses listed in SBL 41635 do not belong to e360 but rather are registered solely to Virtumundo.

For these reasons, Spamhaus will not remove SBL 41635 from the SBL list at this time. Because Virtumundo as an entity does not fall within the terms of the Permanent Injunction, we have not evaluated the sufficiency of the procedures identified in your letter to ensure that Virtumundo complies with United States law and reserve the right (among all others) to decline your request on that basis.

If you have evidence that Virtumundo is covered by the Permanent Injunction, we will consider it. We are also willing to discuss in person or by telephone any of these issues.

Bartly J. Loethen, Esq.  
June 22, 2007  
Page 2

For future reference, please be advised that if you would like to raise an issue about removing listings related to an entity not affiliated with e360 at the time the Permanent Injunction was entered, we do not intend to respond within less than 5 business days. Best personal regards.

Sincerely,

A handwritten signature in cursive script that reads "Carrie A. Fino". The signature is written in black ink and is positioned above the printed name.

Carrie A. Fino

cc: Craig C. Martin  
David Jimenez-Ekman

**EXHIBIT**  
**D**

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Dave Linhardt

847-919-4691

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## SERVICES AGREEMENT

This Service Agreement (this "Agreement") is dated June 6, 2007 ("Effective Date") and is made by and between e360Insight, LLC, an Illinois corporation with offices at 600 Northgate Parkway, Suite A, Wheeling, IL 60090 ("Service Provider"), and Virtuonada, Inc., a Delaware Corporation ("Customer") with offices at 8400 W. 110<sup>th</sup> Street, Overland Park, KS 66210.

### 1. Service Agreement

Service Provider agrees to provide to Customer network management and email messaging services (the "Service"), subject to the terms of this Agreement, the specific services and prices set forth in Exhibit A attached hereto and made a party hereof (the "Service Exhibit"), and the Acceptable Use Policy set forth in Exhibit B ("AUP"), and, together with the Services Exhibit, the "Exhibits"). Additional Exhibits may be executed by the parties and attached to this Agreement from time to time.

### 2. Right to Modify

The services offered in the Service Exhibit and the terms set forth in the AUP may be supplemented, modified or amended (each a "Revision") by Service Provider at any time at its sole discretion, and each such revision will be effective thirty (30) days after it has been sent or e-mailed to Customer. If any Revision is not acceptable to Customer, Customer may terminate this Agreement as provided herein or in the applicable Service Exhibit without any penalty. Customer's continued use of the Services under this Agreement after the effective date of such Revision shall be deemed to constitute acceptance of such Revision.

### 3. Activation and Use of Service

- (a) Following the Effective Date, Service Provider shall provide Customer with an account name and a password which will allow access to the Service. Customer will use the Service as an Independent Content Provider ("ICP"). As an ICP, Customer shall be liable and responsible for any and all activities conducted unless access to the ICP Service is compromised by any entity outside the control of the Customer through its account by Customer or, if applicable, by Customer's users, whether or not such activities have been authorized by Customer.
- (b) Upon Service Provider's request, Customer shall not unreasonably withhold from Service Provider accurate and complete registration information with respect to Customer's use of the Service. Customer's failure to provide or update such information shall constitute a material breach of this Agreement and shall be grounds for Service Provider, at Service Provider's discretion, to terminate this Agreement or terminate the right of any person associated with Customer to use the Service (including any person using the Service through Customer's account with or without Customer's authority). In such case, Customer shall also be liable to Service Provider for any and all remedies which may be available by law or equity.

### 4. Charges

Customer will be charged for the use of the Service in accordance with the rates set forth in the Service Exhibit. Payment shall be due on the last day of the month prior to the applicable monthly period. Any invoice that is not disputed in good faith and in writing within ten (10) days after the invoice date shall be deemed correct. Any late payment may be subject to any costs of collection (including reasonable legal fees) and may bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial months) or at the maximum rate permitted by law, whichever is less. All non-disputed fees paid to Service Provider hereunder are non-refundable. In the event Customer pays the applicable fees by credit card and Customer unreasonably performs a chargeback on such fees Customer shall be liable to Service Provider for an amount equal to one and a half times the applicable fee.

### 5. Use of Service Content

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Dave Linhardt

847-919-4691

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- (a) Customer may charge their users under separate agreements for use of any information, communications, software, photos, video, graphics, music, sounds and other material and services provided by Customer (collectively referred to as the "Content") through the Service.
- (b) Customer acknowledges, and shall also notify its users, that Service Provider is not responsible for and does not give any assurance to any person with respect to the validity, value, usefulness or accuracy of Content. Customer and any person using Customer's account shall bear any risk associated with the Content. Service Provider has the right to monitor the use of the Service, including the Content. However, Service Provider does not prescreen or attempt to censor or review any Content prior to its appearance on the Service. Service Provider has the right (but not the obligation) to require Customer to remove, prohibit or discontinue any Content on the Service which Service Provider, in its sole discretion, determines to be harmful, offensive or otherwise in violation of the AUP, as may be amended from time to time.
- (c) The Service may be used solely to support Customer's own internal operations. The Service shall not be (i) sold or licensed to or used by any third party or (ii) used as a service bureau or for commercial time-sharing.

#### 6. Intellectual Property Rights.

- (a) Content Subject to Rights. Customer and Service Provider acknowledges that Content on the Service, whether provided by Customer or others may include material which is the subject of and protected by patents, copyrights, trademarks, service marks and other proprietary rights ("Intellectual Property Rights"). Customer and Service Provider acknowledges that such Intellectual Property Rights are valid and valuable and are protected and apply to all media, which now exists or may in the future exist. Unless specifically provided elsewhere in this Agreement, Customer's and Service Provider's ability to use any Content, which is protected by such Intellectual Property Rights, shall be governed by applicable law. Customer agrees, and will require each of its users to agree, that it will only transmit Content on the Service that it has the appropriate rights to transmit.
- (b) Lawful Use. Customer agrees to use the Service only for lawful purposes. Customer recognizes and agrees that Service Provider at its sole discretion may monitor any and all areas of the Service to oversee compliance with this Agreement and the AUP and Customer will so inform its users that their use of the Service will constitute consent to such monitoring. If Customer or any of its users restricts or inhibits any other customer or user of the Service, Service Provider may, at its sole discretion, terminate or limit the right of Customer or Customer's user to use the Service after written notice of such restriction or inhibition and a 30 day cure period without resolution have expired.
- (c) Domain Names and Unsubscribe Pages. Service Provider may provide domain names ("Domain Names") and unsubscribe web pages ("Unsubscribe Pages") hereunder. Unless otherwise agreed in writing, each such Domain Name and Unsubscribe Page shall be the property of Service Provider. Notwithstanding Service Provider's ownership, Customer shall be responsible for all of Customer's use of the Domain Names including, but not limited to the content contained on the web pages under the Domain Name. It is assumed for the purposes of this Agreement the Customer intends to acquire any Domain Names and Unsubscribe Pages used in the operation of its business or that of its customers. The Service Provider will provide pricing for each Domain Name or Unsubscribe Page at time of acquisition. Service Provider will assume the Customer does not wish to acquire a Domain Name or Unsubscribe Page when the Customer does not agree to the acquisition price. Customer shall have the first right of refusal to acquire any such Domain Names and Unsubscribe Pages with a bid equal to any competing customer.

#### 7. Confidentiality.

- (a) Definition. "Confidential Information" includes the Service, administrative access to the Service, the terms and conditions of this Agreement (including pricing), software and other related materials furnished by Service Provider, any information, business plan, concept, idea, know-how, process, technique, program, design, formula, algorithm or work-in-process, any engineering, manufacturing, marketing, technical, financial, data, or sales information, or any information regarding suppliers, customers,

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Dave Linhardt

847-919-4691

P. 3

employees, investors, or business operations, and any other information or materials, whether in written, or graphic, or any other form or that is and whether disclosed orally, or electronically, whether tangible or intangible and in whatever form or medium provided, or otherwise which is learned or disclosed in the course of discussions, studies, or other work undertaken between the parties disclosed by either party, before or after the Effective Date, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information.

- (b) Exceptions. Without granting any right or license, the obligations of the parties hereunder shall not apply to any material or information that: (i) is or becomes a part of the public domain through no act or omission by the receiving party; (ii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality to the receiving party; or (iv) is already known by the receiving party without any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice is promptly given to the party whose Confidential Information is to be disclosed so that such party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.
- (c) Ownership of Confidential Information. Nothing in this Agreement shall be construed to convey any title or ownership rights to the Service or other Service Provider Confidential Information to Customer or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest to the Service Provider Confidential Information. Nothing in this Agreement shall be construed to convey any title or ownership rights to Customer's Confidential Information to Service Provider or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest to the Customer Confidential Information. Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy, reproduce or distribute the Confidential Information except as expressly permitted in this Agreement. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft, disclosure, and the unauthorized copying, reproduction or distribution of the Confidential Information.
- (d) Non-Disclosure. Each party agrees at all times to keep strictly confidential all Confidential Information belonging to the other party. Each party agrees to restrict access to the other party's Confidential Information only to those employees or subcontractors who (i) require access in the course of their assigned duties and responsibilities and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth herein.
- (e) Injunctive Relief. Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section.
- (f) Suggestions/Improvements to Service. Notwithstanding anything contained in this Section 7, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding the Service or other Service Provider materials provided to Customer shall be owned by Service Provider, and Customer hereby agrees to assign any such rights to Service Provider. Nothing in this Agreement shall preclude Service Provider from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Service Provider in the performance of any services hereunder.

#### 8. International Usage.

Customer acknowledges that its use of the Service allows access to Content originating from other customers, ICPs and third parties located in countries other than the United States. Customer agrees that its

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Dave Linhardt

847-919-4691

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access to and use of such Content may be governed (in addition to this Agreement and the Exhibits) by separate terms and operating policies, which conform to appropriate and applicable national laws and customs.

9. Warranty.

- (a) Customer warrants that it will not use the Service to (i) send any unsolicited commercial email (as defined in Service Provider's AUP); (ii) send any Content that infringes the proprietary rights of a third party; (iii) send any Content or email that violate the laws of any jurisdiction (including, without limitation, the CAN-Spam Act); or (iv) send any Content or to any email addresses in violation of Customer's privacy policy. Customer further warrants that Customer and Service Provider have negotiated this Agreement at arms length and Customer has had the opportunity to seek the advice of legal counsel.
- (b) Customer agrees, and will require each of its users to agree, that by transmitting or allowing the transmission of any Content on the Service, Customer, Customer's users and clients automatically warrant that Service Provider has the royalty free, perpetual, irrevocable, nonexclusive worldwide right to transmit and display such Content. Customer must obtain the consent of its users to the covenants provided in this Section by requiring such persons to perform sign-on procedures, which will confirm their agreement to and acceptance of these conditions.
- (c) Customer understands and acknowledges that Service Provider does not insert specific language on any email deployment or the Services that may be required by state or federal laws (i.e. ADV: in the subject line of an email).
- (d) CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES AND ANY SOFTWARE PROVIDED HEREUNDER ARE AT THE CUSTOMER'S SOLE RISK. THE SERVICES AND ANY SOFTWARE ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND. SERVICE PROVIDER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR AS TO THE RESULTS THAT CUSTOMER MAY ACHIEVE ON ACCOUNT OF THE SERVICES PROVIDED BY SERVICE PROVIDER.

10. Limitation of Liability.

- (a) IN NO EVENT SHALL SERVICE PROVIDER OR CUSTOMER BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SERVICES WHICH GAVE RISE TO THE DAMAGES DURING THE MONTH OR MONTHS IN WHICH THE SERVICES AND/OR SOFTWARE FAILED TO OPERATE AS A RESULT OF SERVICE PROVIDER'S ACT OR OMISSION AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THE AMOUNT OF FEES PAID TO SERVICE PROVIDER FOR THE PERIOD DURING WHICH THE SERVICE MAY HAVE FAILED TO OPERATE AS A RESULT OF SERVICE PROVIDER'S ACT OR OMISSION SHALL BE SERVICE PROVIDER'S AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF THE SERVICE AND SERVICE PROVIDER'S SOFTWARE.
- (b) IN NO EVENT SHALL SERVICE PROVIDER OR CUSTOMER BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL ARISING HEREUNDER EVEN IF NOTIFIED OF

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**THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF  
ESSENTIAL PURPOSE OF ANY REMEDY.**

**11. Indemnification.**

Customer agrees to indemnify, defend and hold Service Provider harmless from and against any claims, actions or lawsuits from any regulatory agency, state or recipient of Customer's email deployment or Customer use of the Service that does not comply with any then-current state or federal law. In addition, Customer agrees to pay to Service Provider, as liquidated damages, an amount equal to \$50,000 in the event that Customer is found by a court of competent jurisdiction to be in violation of the CAN-Spam Act.

Customer and Service Provider agree to defend, indemnify and hold harmless each other, their affiliated companies, licensees, employees, and ICPs from all liabilities, claims, causes of action and expenses, including reasonable attorneys' fees and internal expenses, arising out of Customer's use of the Service, use of any Domain Names, breach of this Agreement or any Exhibit by Customer or Customer's users, transmission of any Content on the Service whether or not such use was authorized by Customer (including any claim that the Content was deceptive), use of the Service to send unsolicited commercial email (as determined in Service Provider's AUP) or a claim that Customer sent unsolicited commercial email, or the failure to remove a user from the Service when requested. Service Provider shall reasonably cooperate with Customer in the defense of any claims at Customer's expense.

**12. Termination.**

This Agreement shall remain in effect until terminated by either party in writing upon the number of days of advance notice required in the applicable Exhibit (such number of days not to be less than five (5) nor greater than thirty (30)). Upon termination or expiration of this Agreement (i) each party shall deliver to the other all copies of applicable Confidential Information of the other party; (ii) Service Provider shall deliver to Customer a text file containing all valid Customer-owned email addresses in the Service Provider system, provided the termination is not for Customer's uncurd breach of the Agreement; (iii) Customer shall pay all amounts due and owing for Services within 30 days of the effective date of termination; and (iv) Service Provider, shall (if applicable), refund to Customer any pre-paid fees, on a pro-rata basis, for Services not yet rendered. (v) Customer shall be granted a 90 day trial period during which any new service provided by the Service Provider may be cancelled without penalty or obligation and be refunded on a pro-rata basis for any unused portion of the service period during which the termination of trial services was tendered. Termination of this Agreement shall not relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement.

**13. Notices**

Any notice required under this Agreement shall be given in writing and shall be deemed effective upon delivery to the party to whom addressed. All notices shall be sent to the applicable address specified in the recitals hereto or to such other postal address as the parties may designate in writing. Unless otherwise specified, all notices to Service Provider shall be sent to the attention of the General Counsel with copies to the President. Any notice of material breach shall clearly define the breach including the specific contractual obligation that has been breached. Any emails to Service Provider shall be sent to 600 Northgate Parkway, Suite A, Wheeling, IL 60090; however, an email shall not constitute written notice hereunder. Any emails to Customer shall be sent to the e-mail address provided by Customer to Service Provider in writing from time to time.

**14. Force Majeure.**

Service Provider shall not be liable for any delay or failure to perform hereunder due to the inability of Customer, Service Provider or any other person to connect to the Internet, or any other failure or unavailability of the Internet for any cause whatsoever, acts of God or of the public enemy, or of any government or agency thereof, restrictions imposed by governmental agencies, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, severe weather, Internet congestion, virus attacks, Denial Of Service (DOS)

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attacks, differences with workmen, war, hostilities, terrorist acts, riot, rebellion, delay in or lack of transportation facilities, inability to secure materials, power failure or fluctuation or any other cause beyond the control of Service Provider or Service Provider's exercise of its rights under this Agreement. In the event of delay by Service Provider due to any such cause, the date of performance of any act by Service Provider will be postponed by such length of time as may be reasonably necessary to compensate for such delay.

15. Publicity.

- (a) In the event of any problems with the Service or any Customer campaign, whether caused by Service Provider or Customer, the parties shall work in good faith on public relations releases. Furthermore, each party agrees to give the other party twenty-four (24) hours notice prior to the release of any public statements or retractions.

16. Data.

- (a) ALL EMAIL ADDRESSES AND MESSAGE CONTENT PROVIDED BY CUSTOMER ARE THE PROPERTY OF CUSTOMER. Customer shall provide all source data for the email addresses uploaded to the Service ("Source Data"). The Source Data shall contain, at a minimum, the IP address and url where the individual registered to receive messages and the time-stamp of such sign-up. Service Provider shall have the right to retain records of all data pertaining to use of the Service by Customer or Customer's users including, but not limited to, usage, email addresses, email messages, activity logs, and click-throughs. Service Provider may disclose such data to third parties provided it is grouped with other Service Provider clients' data and is presented in an aggregate form. Service Provider shall retain all rights to aggregate data after termination or expiration of this Agreement.
- (b) Notwithstanding confidentiality provisions herein, Service Provider may disclose usage information about specific email addresses to respond to abuse complaints from other mail administrators, law enforcement agencies, or any other governmental agency. Service Provider will provide notification of any such requests of Customer's data.

17. Miscellaneous.

- (a) To the extent of any conflict between this Agreement and the Exhibits, the Exhibits shall take precedence.
- (b) Each provision of this Agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation. Any such reformation may be cause for termination of the Agreement.
- (c) This Agreement, including any Exhibits, shall constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. Any signed copy of this Agreement made by reliable means (e.g., photocopy or facsimile) shall be considered an original.
- (d) Customer shall not assign or transfer this Agreement whether by operation of law, change of control, or in any other manner, without the prior written consent of Service Provider, such consent shall not be unreasonably withheld by the Service Provider. Any attempt to assign or transfer this Agreement shall be null and void.
- (e) Except as otherwise provided herein, the parties agree that this Agreement cannot be altered, amended or modified, except by a writing signed by an authorized representative of each party.
- (f) Customer shall comply with all then-current export and import laws and regulations of the United States and such other governments as are applicable when using the Service. Customer hereby certifies that it will

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not directly or indirectly export, re-export, transship, or transmit the Service, or any portion thereof, or related information, media, or products in violation of United States laws and regulations.

- (g) Customer agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under this Agreement. The parties agree that the Agreement shall not be governed by the United Nations Convention on the International Sale of Goods or by UCITA, the application of which is expressly excluded.
- (h) The provisions set forth in Sections 4, 6, 7, 9, 10, 11, 13, 16, and 17 of this Agreement shall survive termination or expiration of this Agreement.
- (i) No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.
- (j) Headings are for reference purposes only, have no substantive effect, and shall not enter into the interpretation hereof.
- (k) Service Provider is an independent contractor and nothing in this Agreement shall be deemed to make Service Provider an agent, employee, partner or joint venturer of Customer. Neither party shall have no authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.
- (l) THIS AGREEMENT IS A RESULT OF ARMS-LENGTH NEGOTIATIONS BETWEEN THE PARTIES, BOTH OF WHOM WERE REPRESENTED BY COUNSEL OR HAD ADEQUATE OPPORTUNITY TO SEEK COUNSEL OR BE REPRESENTED BY COUNSEL. THEREFORE, THIS AGREEMENT IS THE PRODUCT OF BOTH PARTIES. TO THIS EFFECT, NO PART OF THIS AGREEMENT SHOULD BE CONSTRUED AGAINST EITHER PARTY AS THE DRAFTER. EACH PARTY WAIVES ANY POTENTIAL CLAIM OF IGNORANCE AS TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.
- (m) During the term of this Agreement and for a period of two (2) years thereafter, Customer and Service Provider agree not to hire, solicit, nor attempt to solicit, the services of any employee or subcontractor from either party without the prior written consent of party for whom the employee or contractor is being hired away from. Both parties further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or subcontractor of Service Provider for a period of one (1) year from such former employee's or Subcontractor's last date of service with the other party. Violation of this provision shall entitle the damaged party to liquidated damages against the other party equal to one hundred percent (100%) of the solicited person's gross annual compensation.
- (n) This Agreement shall be governed by the laws of the State of Illinois, excluding the conflicts of law provisions of any state or jurisdiction. Customer agrees to bring any litigation arising out of this Agreement in the state or federal courts located in Kansas and Service Provider consents to the exclusive jurisdiction of such courts. Service Provider agrees to bring any litigation arising out of this Agreement in the state or federal courts located in Illinois and Customer consents to the exclusive jurisdiction of such courts.

The parties hereto agree to the foregoing as evidenced by their signatures below.

E360INSIGHT, LLC

By: *David W. Linhardt*  
 Name: DAVID W. LINHARDT  
 Title: PRESIDENT  
 Date: 6/13/07

[INSERT NAME OF CUSTOMER]

By: *Scott D. Moore*  
 Name: Scott D. Moore  
 Title: President  
 Date: 6-6-2007

**EXHIBIT**  
**E**

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### [Virtumundo - Potentially unwanted application - Sophos threat analysis](#)

Analysis of the **Virtumundo** Adware, with information on its behaviour and recovery instructions.

[www.sophos.com/security/analyses/virtumundo.html](#) - 16k - Jun 24, 2007 - [Cached](#) - [Similar pages](#)

### [Malware Removal: Virtumundo - CastleCopsWiki](#)

This procedure is to remove Adware-**Virtumundo** (Vundo). Winfixer / WinAntiSpyware / WinAntiVirus and Adware-**Virtumundo** are not one and the same. ...

[wiki.castlecops.com/Malware\\_Removal:\\_Virtumundo](#) - [Similar pages](#)

### [Removing Virtumundo - Tech Support Guy Forums](#)

My McAfee virusscan has been no help, and keeps getting disabled. Here is the HijackThis logfile. Any help welcome: Logfile of HijackThis v1.99.1.

[forums.techguy.org/security/415704-removing-virtumundo.html](#) - 114k -

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### [McAfeehelp.com :: View topic - Removal Tool - Vundo/Virtumundo ...](#)

For those of you who seem to have a lot of WinFixer popups and detections for Adware-**Virtumundo** (PUP) that can't be removed, I have created this automatic ...

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**Adware-Virtumundo**

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**Remove VirtuMundo, removal instructions**

**VirtuMundo**, also known as VirtualMundo and VirtuMonde, is a widely spread adware parasite that downloads from the Internet and displays large amount.  
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